IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1446 OF 1988

Smt. Kamalabai Rau Dhangar
since deceased through her
legal heirs :
A) Leelabai Shyamrao Landge,
B) Balaso Appanna Pujari,
C) Malabai Shivaji Badkar ... Petitioners

versus

Mahadeo Gopal Javandar ... Respondent

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Mr. P. D. Dalvi, for the Petitioners.
Mr. N. J. Patil, for the Respondent.

...

CORAM : A.M.KHANWILKAR,J.

11th June 2004

ORAL JUDGMENT :

. This writ petition under Article 227 of the Constitution of India takes exception to the judgment and order dated 12th November 1987 in Revision No. MRT-KP-181/84 passed by the

Maharashtra Revenue Tribunal at Camp Kolhapur. Briefly stated, the Petitioner claims to be the owner in respect of land bearing Survey No. 610 admeasuring 36 gunthas situated at village Wadange, taluka Karveer, district Kolhapur. Proceedings under section 32G of the Bombay Tenancy and Agricultural Lands Act were commenced in the year 1960, but were dropped on the finding that there was no relationship of landlord and tenant between the parties. Against the said decision, the tenant carried the matter in appeal. The appellate authority, in turn, remanded the matter for further enquiry by its decision dated 29th February 1964. While the remand proceedings were pending, in the meantime, action under section 145 of the Code of Criminal Procedure was commenced wherein the suit land stood attached on 21st January 1963. The Sub-Divisional Magistrate made reference to the Civil Court for its decision being Criminal Reference No. 1 of 1963. In the said reference, issue was framed by the Civil Court as to which party was in actual possession of the disputed land on the relevant date, i.e., 23-2-1963. The trial Court answered the said issue in favour of

the Petitioner. Later on, the Respondent instituted suit against the Petitioner for injunction. In the said suit, issue of tenancy was raised on account of which the Civil Court made reference to the tenancy authority under section 85A of the Act. The said reference was numbered as Tenancy Case No. 30/1965, which was heard and finally decided by the Agricultural Lands Tribunal by judgment and order dated December 15, 1965. The said authority positively found on appreciation of materials on record that the Respondent failed to prove his possession and wahiwat in respect of the suit land as tenant. It is not in dispute as has been found by the Courts below that this decision was allowed to attain finality, as the Respondent did not question correctness thereof. However, the remand proceedings under section 32G of the Act in terms of order passed by the Sub-Divisional Officer dated February 20, 1964, continued further notwithstanding the aforesaid finding recorded against the Respondent. In view of the above finding, in fact, no further proceedings under section 32G of the Act were warranted. Be that as it may, the first authority, by judgment

and order dated November 21, 1974, took the view that the Respondent was tenant and entitled to purchase the suit land being deemed purchaser. Against this decision, the Petitioner filed appeal, being Appeal No. 34 of 1975. The appellate Court by its judgment and order dated July 30, 1976, allowed the appeal and held that the Respondent was not tenant. That order was challenged by the Respondent by way of revision application before the Tribunal, which was, however, allowed by the Tribunal on December 18, 1977. What is relevant to note is that the Petitioner moved by way of review petition before the Tribunal for recall of order dated December 18, 1977. The Tribunal, upon re-examination of the order, allowed the said review application by judgment and order dated June 15, 1978. In the said decision, the Tribunal observed that the matter deserves to be remanded to the trial Court for further examination to find out whether the original Petitioner landlady was widow on the relevant date, for which reason the proceedings under section 32G should be dropped. The review order passed by the Tribunal was challenged by the Respondent before this Court by way of

Special Civil Application No. 3145 of 1978. It will be apposite to reproduce the order as passed by this Court on October 18, 1982 in the said writ petition. The same reads thus :

> " There is no merit in the present petition. The order impugned now is reviewed by the Member, Maharashtra Revenue Tribunal, Kolhapur (hereinafter called "The Tribunal") on the basis that the land-holder one Dadu died on December 8, 1956 and because of that the determination under section 32-G of the Bombay Tenancy and Agricultural Lands Act, 1948 (hereinafter called "the Act") had to be made all afresh.
>
> Mr. Naik submitted that the observations made by the Tribunal that if Kamlabai is his widow the proceedings should be dropped does not further the ends of justice.
>
> That is no reason to interfere with the order. What the order directs is to find

> out the position after the death of Dadu who, as is found, admittedly died on December 8, 1956. The authority concerned will have to find out who are the legal heirs of Dadu and then, applying the provisions of the law, will have to consider the proceedings under section 32-G of the Act.
>
> This being the clear position, no interference is called for. Rule discharged with no order as to costs."

In the circumstances, the remand proceedings continued before the first Court, which, in turn, by judgment and order dated August 1, 1983, found that the Respondent was not a tenant in respect of the suit land on the Tillers' Day, i.e., 1st April 1957. The relevant portion of the reasoning in the said decision needs to be adverted to at this stage. The same reads thus :

> " Fresh notices are issued and are served upon both the parties. On the date of

enquiry the opponent tenant given written pursis and states that he has already given his say earlier in this case and further do (does) not want to add or say more. The applicant landlords say has been recorded. She says that case u/s 85-A of the B.T. and A.L. Act was already decided in her favour and further it is ordered therein that the opponent was not a tenant on 1.4.1957. On going through the case papers, statements it is revealed that the applicant was a widow on 1.4.1957 as her husband's father expired on 8.12.56. This date of death is supported by death extract issued by the Competent Authority. Moreover a Court reference u/s 85-A of the B.T. and A.L. Act 1948 was instituted between the parties. The Tenancy A.K. Karvir under his Case No. 30/65 dt. 15.12.65 decided that the Opponent tenant was not a tenant on the tillers day. The opponent Tenant has not challenged this order. So it is finally decided that Opponent is not a tenant.

> Moreover the applicant was a widow on tillers day so the provisions of 32-G are not applicable. So the proceeding is required to be dropped. ..."

Accordingly, the authority ordered that proceedings under section 32G of the said Act needs to be dropped. Against this decision, the Respondent carried the matter in appeal. Even the appeal came to be dismissed. The appellate authority more or less reiterated the view taken by the first authority as reproduced above.

. Insofar as the issue as to whether the Respondent was lawful tenant in respect of the suit land is concerned, the appellate authority observed thus :

> "In order to establish relationship of tenant and landlord between the two parties, there should invariably be a lease deed and rent receipts. A person who has got tenancy rights in an agricultural land according to law is

required to pay the assessment and other Govt. cesses, but on perusal of the proceeding of this case, I have observed that Shri Mhadu Javandal has totally failed to produce any type of such document in order to prove his tenancy in the suit land. It is also seen from the order of the Civil Court on page 49 that Mahadu Javandal was not in possession of the suit land on 23.2.1963. He had filed a Civil Suit against the landlady in the Court of the Joint Civil Judge, Jr. Division, Kolhapur in which the learned Civil Judge had framed the following issue and it was referred to the Tahsildar, Karvir for giving his finding thereon u/s. 85-A of the Act.

> 'Does the Plaintiff prove that the time Receiver obtained possession of the suit land on 23.2.1963 he was in possession and wahiwat of the suit land as a tenant first from Dadu Vithu Dhangar and after his death from

the Defendant lady?’

> The Tenancy A.K. Karvir made requisite inquiries into this reference and under his order Tenancy Case No. 30/65 dated 15.12.1965 (vide page 163) answered the issue in the negative. No appeal against the order passed by the Ten. A.K. appears to have been preferred by the so called tenant Shri Javandar. It is thus clear that Shri Mahadu Javandal was never inducted as lawful tenant in the suit land. In absence of any documentary evidence and in view of the finding of the Civil Court and the Ten. A.K. I come to the conclusion that Mahadu Javandal was not a lawful tenant of the suit land within the meaning of section 2(18) of the Act and answer this issue in the negative."

Against this decision, the Respondent carried the matter further in revision application under section 76 of the Act. The revisional authority, in turn, passed its decision on the basis of

reasons which weighed with the Tribunal in its order dated 18th December 1977 which, in fact, was reviewed by the Tribunal by its decision dated 15th June 1978 and the review order came to be confirmed by this Court. In other words, it is on this mistaken position the Tribunal proceeded to examine the matter afresh and by re-appreciating materials on record proceeded to hold that the Respondent was tenant in respect of the suit land. In fact, in the reasoning, the Tribunal has not made reference to the review decision passed by the Tribunal, as referred to earlier. Besides, in the impugned judgment, the Tribunal has not considered the efficacy of the decision passed by the tenancy authority as back as on December 15, 1965 while answering the reference made by the Civil Court holding that the Respondent was not tenant in respect of the suit land and which decision admittedly was allowed to attain finality. This impugned judgment is the subject matter of challenge in the present writ petition.

. Learned Counsel for the Petitioner submits that the Tribunal has clearly exceeded

its jurisdiction under section 76 of the Act. In the first place, it has not considered the effect of the decision which has attained finality between the parties rendered on 15th December 1965 by the tenancy authority holding that the Respondent was not lawful tenant in respect of the suit land. It is also contended that the Tribunal could not have re-appreciated the materials on record, so as to reverse the finding of fact as returned by the authorities below. It is contended that the Tribunal has committed manifest error in interfering with the revision application as preferred by the Respondents, that too on the reasons which are totally untenable. On the other hand, Counsel for the Respondents would contend that no fault can be found with the view taken by the Tribunal and neither the decision passed in review proceedings nor the earlier view recorded by the tenancy authority in decision dated 15th December 1965 will be of no avail to the Petitioner. In other words, the learned Counsel has supported the impugned decision of the Tribunal and adopted the reasons recorded by the Tribunals as his submissions.

. Having considered the rival submissions, to my mind, the Tribunal has clearly exceeded jurisdiction vested in it under section 76 of the Act. In the first place, the Tribunal has undertaken the exercise of re-appreciating the evidence so as to record a finding of fact different than the one recorded by the authorities below. Moreover, the Tribunal has glossed over the decision passed in review proceedings dated June 15, 1978, which, in turn, recalled its earlier decision dated December 18, 1977, whereas the Tribunal in the impugned judgment has answered the issue in favour of the Respondent essentially relying on the said decision dated December 18, 1977, which was subsequently reviewed, which had the effect of effacing the same from the record. On the other hand, from the chronology of events, it is more than established that the finding recorded by the competent authority (tenancy authority) in its decision dated December 15, 1965, in the reference made by the Civil Court to decide the issue of tenancy in respect of the suit land has been answered against the Respondent and which decision has attained finality, having remained

unchallenged. If it is so, it is too late in the day for the Respondent to still contend that the Respondent was tenant in respect of the suit land. The decision rendered in the reference proceedings would obviously bind the Respondent. Viewed in this perspective, to my mind, the Tribunal has committed manifest error in reversing the decision of two authorities below, which had held that the Respondent cannot be held to be lawful tenant in respect of the suit land. The question as to whether original Petitioner landlady was widow and had incurred disability on the tillers day would only be relevant to answer the point that in that situation the proceedings under section 32G of the Act cannot be permitted to proceed. However, if there is no relationship between the parties that of landlord and tenant, the question of continuing with the section 32-G proceedings or application of the said provision does not arise. Accordingly, this writ petition should succeed. The same is allowed. The impugned judgment and order is set aside and, instead, the opinion recorded by the two authorities below that the Respondent is not lawful tenant in respect of the suit land is

upheld. Ordered accordingly.

. Rule made absolute with no order as to costs.

. All concerned to act on the copy of this order duly authenticated by the Court Stenographer of this Court.

(A.M.KHANWILKAR,J.)

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